

AMENDED IN ASSEMBLY JANUARY 10, 2008

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1565

Introduced by Assembly Member Lieber

February 23, 2007

~~An act to to repeal and add Section 4062.2 of the Labor Code, relating to workers' compensation.~~ *An act to amend Section 676.10 of the Insurance Code, relating to insurance policies.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, as amended, Lieber. ~~Workers' compensation: medical evaluations.~~ *Insurance policies: nonprofit organizations.*

Under existing law, an insurer that issues policies to certain nonprofit organizations is prohibited from canceling or refusing to renew the policy, or from imposing an excessive or discriminatory premium solely on the basis that one or more claims has been made against the policy for a loss that is the result of a hate crime or antireproductive-rights crime, as defined.

This bill would add a crime against a place of religious observance or practice, as defined, to those crimes. It would also redefine the term "hate crime" for these purposes.

~~Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law provides that whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January~~

1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only in accordance with prescribed requirements for the conduct of the evaluation. Existing law authorizes either of the parties to a dispute arising out of an injury or a claimed injury, if no agreement is reached regarding the selection of a physician to be a qualified medical evaluator to conduct a comprehensive medical evaluation, to request assignment of a 3-member panel of qualified medical evaluators. Existing law provides that if the parties have not agreed on a medical evaluator from the panel by the 10th day after assignment of the panel, each party may then strike one name from the panel, and the remaining qualified medical evaluator shall serve as the medical evaluator. Existing law further specifies that if a party fails to exercise the right to strike a name from the panel within 3 working days of gaining the right to do so, the other party may select any physician who remains on the panel to serve as the medical evaluator.

This bill would authorize, if a party fails to exercise the right to strike a name from the panel within 3 working days of gaining the right to do so, the other party, in addition to selecting any physician who remains on the panel to serve as the medical evaluator, to also obtain a medical evaluation in a manner agreed upon by the parties.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 676.10 of the Insurance Code is amended
2 to read:
3 676.10. (a) This section applies to policies covered by Section
4 675, 675.5, or 676.5 if the insured is a religious organization
5 described in clause (i) of subparagraph (A) of paragraph (1) of
6 subsection (b) of Section 170 of Title 26 of the United States Code,
7 an educational organization described in clause (ii) of subparagraph
8 (A) of paragraph (1) of subsection (b) of Section 170 of Title 26
9 of the United States Code, or other nonprofit organization described
10 in clause (vi) of subparagraph (A) of paragraph (1) of subsection
11 (b) of Section 170 of Title 26 of the United States Code that is
12 organized and operated for religious, charitable, or educational
13 purposes, or a reproductive health services facility, as defined in
14 subdivision (h) of Section 423.1 of the Penal Code, or its
15 administrative offices.

(b) No insurer issuing policies subject to this section shall cancel or refuse to renew the policy, nor shall any premium be excessive or unfairly discriminatory solely on the basis that one or more claims has been made against the policy during the preceding 60 months for a loss that *is has been determined by a law enforcement agency to be* the result of ~~a hate crime committed against the person or property of the insured, or an anti-reproductive-rights crime.~~ any of the following:

(e) ~~As it relates to this section, if determined by a law enforcement agency, a “hate crime” may include any of the following:~~

~~(1) By force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person’s race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. However, the foregoing offense does not include speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.~~

~~(2) Knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person’s race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.~~

~~(d) As it relates to this section, if determined by a law enforcement agency, “anti-reproductive-rights crime” shall have the meaning set forth in subdivision (a) of Section 13776 of the Penal Code, and shall also include a violation of subdivision (c) of Section 423.2 of the Penal Code, if the crime results in a covered loss under a policy subject to this section.~~

~~(e)~~

1 (1) A hate crime, as defined in Section 422.55 of the Penal Code,
2 committed against the person or property of the insured.

3 (2) An antireproductive-rights crime, as defined in Section
4 13776 of the Penal Code, or a violation of subdivision (e) of
5 Section 423.2 of the Penal Code, if the crime results in a covered
6 loss under a policy subject to this section.

7 (3) A crime against a place of religious observance or practice,
8 defined as either of the following:

9 (A) A church, gurdwara, mandir, mosque, synagogue, temple,
10 or other place of religious observance or practice that is owned
11 or lawfully controlled by a religious group or entity, or member
12 of a religious group or entity, that meets for religious purposes at
13 that place.

14 (B) A place primarily used as a place of religious observance
15 or practice where religious observances or practices are regularly
16 conducted with the express consent of the person or entity that
17 owns or lawfully controls the place.

18 (c) As used in subdivision (b), “religious” is the adjectival form
19 of “religion,” as used in Section 422.56 of the Penal Code.

20 (d) Upon cancellation of or refusal to renew a policy subject to
21 this section after an insured has submitted a claim to the insurer
22 that is the result of a hate crime committed against the person or
23 property of the insured, or an anti-reproductive-rights crime
24 described in subdivision (b), the insurer shall report the cancellation
25 or nonrenewal to the commissioner.

26 ~~(f)~~

27 (e) A violation of this section shall be an unfair practice subject
28 to Article 6.5 (commencing with Section 790) of Chapter 1 of
29 Division 2.

30 ~~(g)~~

31 (f) Nothing in this section shall prevent an insurer subject to
32 this section from taking any of the actions set forth in subdivision
33 (b) on the basis of criteria not otherwise made invalid by this
34 section or any other act, regulation, or law.

35 ~~SECTION 1. Section 4062.2 of the Labor Code is repealed.~~

36 ~~SEC. 2. Section 4062.2 is added to the Labor Code, to read:~~

37 ~~4062.2. (a) Whenever a comprehensive medical evaluation is~~
38 ~~required to resolve any dispute arising out of an injury or a claimed~~
39 ~~injury occurring on or after January 1, 2005, and the employee is~~

1 ~~represented by an attorney, the evaluation shall be obtained only~~
2 ~~as provided in this section.~~

3 ~~(b) If either party requests a medical evaluation pursuant to~~
4 ~~Section 4060, 4061, or 4062, either party may commence the~~
5 ~~selection process for an agreed medical evaluator by making a~~
6 ~~written request naming at least one proposed physician to be the~~
7 ~~evaluator. The parties shall seek agreement with the other party~~
8 ~~on the physician, who need not be a qualified medical evaluator;~~
9 ~~to prepare a report resolving the disputed issue. If no agreement~~
10 ~~is reached within 10 days of the first written proposal that names~~
11 ~~a proposed agreed medical evaluator, or any additional time not~~
12 ~~to exceed 20 days agreed to by the parties, either party may request~~
13 ~~the assignment of a three-member panel of qualified medical~~
14 ~~evaluators to conduct a comprehensive medical evaluation. The~~
15 ~~party submitting the request shall designate the specialty of the~~
16 ~~medical evaluator, the specialty of the medical evaluator requested~~
17 ~~by the other party if it has been made known to the party submitting~~
18 ~~the request, and the specialty of the treating physician. The party~~
19 ~~submitting the request form shall serve a copy of the request form~~
20 ~~on the other party.~~

21 ~~(c) Within 10 days of assignment of the panel by the~~
22 ~~administrative director, the parties shall confer and attempt to agree~~
23 ~~upon an agreed medical evaluator selected from the panel. If the~~
24 ~~parties have not agreed on a medical evaluator from the panel by~~
25 ~~the 10th day after assignment of the panel, each party may then~~
26 ~~strike one name from the panel. The remaining qualified medical~~
27 ~~evaluator shall serve as the medical evaluator. If a party fails to~~
28 ~~exercise the right to strike a name from the panel within three~~
29 ~~working days of gaining the right to do so, the other party may~~
30 ~~select any physician who remains on the panel to serve as the~~
31 ~~medical evaluator, or a medical evaluation may be obtained in a~~
32 ~~manner agreed upon by the parties. The administrative director~~
33 ~~may prescribe the form, the manner, or both, by which the parties~~
34 ~~shall conduct the selection process.~~

35 ~~(d) The represented employee shall be responsible for arranging~~
36 ~~the appointment for the examination, but upon his or her failure~~
37 ~~to inform the employer of the appointment within 10 days after~~
38 ~~the medical evaluator has been selected, the employer may arrange~~
39 ~~the appointment and notify the employee of the arrangements.~~

1 ~~(e) If an employee has received a comprehensive medical-legal~~
2 ~~evaluation under this section, and he or she later ceases to be~~
3 ~~represented, he or she shall not be entitled to an additional~~
4 ~~evaluation.~~